

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANCIS BREEN, JR.
1080 Richardson Avenue
Bensalem, PA 19020

Plaintiff,

v.

BRENNER AEROSTRUCTURES, LLC
d/b/a The Atlas Group
450-3 Winks Lane
Bensalem, PA 19020
and
ATLAS AEROSPACE, LLC
d/b/a The Atlas Group
4425 W. May Street, Bldg. A
Wichita, KS 67209

Defendants.

CIVIL ACTION

NO.: _____

JURY TRIAL DEMANDED

CIVIL ACTION COMPLAINT

Francis Breen, Jr. (hereinafter “Plaintiff”) by and through his undersigned counsel, hereby avers as follows:

INTRODUCTION

1. Plaintiff has initiated this action to redress violations by Brenner Aerostructures, LLC, d/b/a The Atlas Group (hereinafter, “Brenner”) and Atlas Aerospace, LLC, d/b/a The Atlas Group (hereinafter, “Atlas”) (collectively, “Defendants”) of the Age Discrimination in Employment Act (“ADEA” – 29 U.S.C. §§ 621 *et seq.*) and the Pennsylvania Human Relations Act (“PHRA”).¹ As a direct consequence of Defendants’ unlawful actions, Plaintiff seeks damages as set forth herein.

¹ Plaintiff’s claims under the PHRA are referenced herein for notice purposes. He is required to wait one (1) full year before initiating a lawsuit from date of dual-filing with the EEOC. Plaintiff must, however, file his lawsuit in advance

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) because it arises under the laws of the United States and seeks redress for violations of federal laws.

3. This Court may properly assert personal jurisdiction over Defendants because their contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), and its progeny.

4. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this district because Defendants are deemed to reside where they are subjected to personal jurisdiction, rendering Defendants residents of the Eastern District of Pennsylvania.

5. Plaintiff is proceeding herein (in part) under the ADEA after properly exhausting all administrative remedies with respect to such claims by timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) and by filing the instant lawsuit within ninety (“90”) days of receiving a notice of dismissal and/or right to sue letter from the EEOC.

PARTIES

6. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

7. Plaintiff is an adult individual with an address as set forth in the caption.

of same because of the date of issuance of his federal right-to-sue-letter under the ADEA. Plaintiff’s PHRA claims will mirror identically his federal claims under the ADEA.

8. Brenner is an aviation and aerospace company and operates a leading aerostructures manufacturer based in Bensalem, Pennsylvania.

9. Atlas is a global provider of complex aerospace products and services for commercial, business and defense clients.

10. Atlas, upon information and belief, is the parent company of several aerospace subsidiaries through the United States, including but not limited to Brenner, with headquarters at the address as set forth in the caption.

11. Atlas: acquired Brenner; lists Brenner as one of its affiliated companies on Atlas' website; and advertises career opportunities with Brenner on its website.

12. Because of their interrelation of operations, common ownership or management, centralized control of labor relations, common ownership or financial controls, and other factors, Defendants are sufficiently interrelated and integrated in their activities, labor relations, ownership and management that they may be treated as a single and/or joint employer for purposes of the instant action.

13. At all times relevant herein, Defendants acted by and through their agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for the Defendants.

FACTUAL BACKGROUND

14. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

15. Plaintiff is a 61-year-old male, who was born in 1960.

16. Plaintiff was employed by Defendants for over five (5) years, from in or about July of 2015 until his unlawful termination (discussed further *infra*) on or about August 14, 2020.

17. Plaintiff was initially hired as a Senior Accountant. After Defendants recognized Plaintiff's hard work and dedication, he was promoted to Controller after one (1) year.

18. Throughout his employment with Defendants, Plaintiff was the sole person employed in the "accounting department" in Defendants' Bensalem, Pennsylvania location.

19. During his employment, Plaintiff was supervised locally by Michael Porter (President of Brenner) and Keith Kranzow (President and CFO of Atlas).

20. Plaintiff was a hard-working employee who performed his job very well throughout his years of employment. Prior to his termination, Plaintiff had not received any progressive warnings or discipline of any kind related to performance.²

21. Within less than a week prior to Plaintiff's termination from employment (discussed further *infra*), Plaintiff learned of a new hire within his department. This person (Joseph Wenson, who appeared to be aged in his late 30's/early 40's) was referred to as a "Senior Accountant," although he was substantially younger than Plaintiff.

22. Plaintiff was abruptly blind-sided with a baseless termination on or about August 14, 2020, at the direction of Kranzow, who is also substantially younger than Plaintiff.

23. Defendants' stated rationale for terminating Plaintiff after over five (5) years of employment – a purported "restructuring" – was completely pretextual and clearly a baseless excuse to terminate Plaintiff because of his advanced age.

24. There was in fact no restructuring, as evidenced by the fact that the headcount in Plaintiff's department ***remained the same*** as it did, prior to Plaintiff's termination.

25. Plaintiff was functionally replaced by someone younger than he was, who was performing Plaintiff's ***same general role***, albeit under the pretext of a different job title. This individual did not have Plaintiff's level of experience, qualifications and seniority.

² Plaintiff did receive a warning for alleged absences in 2019, which were related to cancer surgery and treatment.

26. Plaintiff even stated to Porter that if there were truly any changes to be made, Plaintiff would have taken a pay cut or a different title. Porter responded that Kranzow would not have consented to this.

27. Upon information and belief, as of recent times, there has also been a shift by Defendants to hiring younger personnel and older employees separating.

28. When Plaintiff was informed of his termination, he was presented with a severance agreement asking that he waive any claims that he has or may have against Defendants in exchange for monetary compensation. Upon information and belief, Defendants do not have a written policy regarding severance and typically do not offer severance packages.³

29. Plaintiff believes and therefore avers that he was terminated from his position with Defendants because of his advanced age.

COUNT I
Violation of the Age Discrimination in Employment Act (“ADEA”)
(Age Discrimination)
-Against Both Defendants-

30. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

31. While employed with Defendants, Plaintiff was subjected to discrimination based on his age by Defendants’ management.

³ See e.g. *Staffieri v. Northwestern Human Servs.*, 2013 U.S. Dist. LEXIS 72115 at **14-15 (E.D. Pa. May 22, 2013) (an employer who offered severance when policies did not require upon condition of waiving FMLA claim supported finding of pretext in FMLA claim among other facts); *Bartlett v. NIBCO Inc.*, 2011 U.S. Dist. LEXIS 28072 (N.D. Ind. 2011) (“Severance pay packages contingent upon a release of claims which are offered *contemporaneously with the notice of termination* are not covered by [Rule 408]”, and the motive in offering same is admissible evidence); *Karl v. City of Mountlake Terrace*, 2011 U.S. Dist. LEXIS 59085 (W.D. Wash. 2011) (severance agreements are admissible in retaliation claims when made contemporaneous to termination, as they are not governed by FRE 408); *Cassino v. Reichhold Chemicals, Inc.*, 817 F.2d 1338, 1342-43 (9th Cir. 1987) (emphasis added) (finding no abuse of discretion when district court admitted severance agreement into evidence, stating “[w]here, as here, the employer tries to condition severance pay upon the release of *potential claims*, the policy behind Rule 408 does not come into play.”)

32. Plaintiff was treated disparately with respect to termination, contrary to individuals substantially younger than him.

33. Plaintiff was baselessly terminated on or about August 14, 2020, for pretextual reasons. While Defendants claimed that Plaintiff was terminated as a result of an alleged “restructuring,” there was, in fact, no restructuring.

34. Following Plaintiff’s termination, he was replaced by/his job duties have been performed by a much younger, less experienced individual, who does not possess Plaintiff’s level of qualifications.

35. Plaintiff believes and therefore avers that he was terminated from his position with Defendants because of his advanced age.

36. These actions as aforesaid constitute unlawful age discrimination under the ADEA.

WHEREFORE, Plaintiff prays that this Court enter an Order providing that:

A. Defendants are to promulgate and adhere to a policy prohibiting discrimination and retaliation in the future against any employee(s);

B. Defendants are to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendants’ illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement and seniority;

C. Plaintiff is to be awarded liquidated damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious and outrageous conduct and to deter Defendants or other employers from engaging in such misconduct in the future;

D. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper and appropriate (including but not limited to damages for emotional distress, pain, suffering and humiliation under the PHRA); and

E. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

F. Plaintiff is to be given a jury trial as demanded in the caption of this Complaint.

Respectfully submitted,

KARPF, KARPf & CERUTTI, P.C.

By:



Ari R. Karpf, Esq.
3331 Street Rd.
Two Greenwood Square, Suite 128
Bensalem, PA 19020
(215) 639-0801
Attorneys for Plaintiff

Dated: May 10, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Francis Breen, Jr.

CIVIL ACTION

v.

Brenner Aerostructures, LLC d/b/a The Atlas Group, et al.


NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

5/10/2021

Date
Attorney-at-lawPlaintiffAttorney for(215) 639-0801(215) 639-4970akarpf@karpf-law.comTelephoneFAX NumberE-Mail Address

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 1080 Richardson Avenue, Ben salem, PA 19020

Address of Defendant: 450-3 Winks Lane, Bensalem, PA 19020 / 4425 W. May Street, Bldg A, Wichita, KS 67209

Place of Accident, Incident or Transaction: Defendants place of business

RELATED CASE, IF ANY:

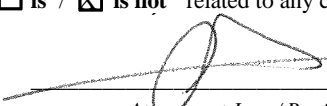
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/10/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

CIVIL: (Place a √ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☒ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
(Please specify): _____

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases
(Please specify): _____

ARBITRATION CERTIFICATION

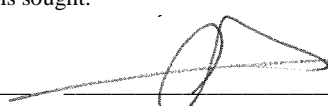
(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Ari R. Karpf, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 5/10/2021


Attorney-at-Law / Pro Se Plaintiff

ARK2484 / 91538

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

